

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEREMY MARK READ,

PETITIONER,

v.

ALICE PAYNE,

RESPONDENT.

NO. CV-05-0345-CI

ORDER ADOPTING REPORT AND
RECOMMENDATION

Magistrate Judge Imbrogno filed a Report and Recommendation on May 24, 2006, recommending Petitioner's claims for habeas relief be dismissed with prejudice. (Ct. Rec. 21.) On June 8, 2006, Petitioner timely filed an Objection to the Report and Recommendation. (Ct. Rec. 22.)

In his objection, Petitioner raises for the first time defense counsel's reliance on the defense of "excusable homicide" at trial as a basis for his claim of ineffective assistance of counsel. According to Petitioner, this defense was "guaranteed to fail in light of the facts of this case." (Ct. Rec. 22 at 3.) Petitioner also objects to the application of *Strickland v. Washington*, 466 U.S. 668 (1984), to his case and claims the standard in *U.S. v. Cronin*, 466 U.S. 648, 657-662 (1984), should have been applied.

1 (Ct. Rec. 22 at 3.) Petitioner's objections consist of new claims
2 that were not argued at the state level; therefore, these new claims
3 are unexhausted and procedurally barred. See *O'Sullivan v.*
4 *Boerckel*, 526 U.S. 838, 844-34 (1999.)

5 Having reviewed the May 24, 2006, Report and Recommendation
6 (Ct. Rec. 21) and Petitioner's objections (Ct. Rec. 22), the Court
7 **ADOPTS** the Report and Recommendation in its entirety. Petitioner's
8 Writ of Habeas Corpus is **DISMISSED WITH PREJUDICE**.

9 **IT IS SO ORDERED.** The District Court Executive shall forward
10 copies of this Order to Petitioner, counsel for Petitioner, and
11 counsel for Respondent.

12 DATED this 27th day of July, 2006.

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14 ***s/Lonny R. Suko***

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16 LONNY R. SUKO
17 UNITED STATES DISTRICT JUDGE
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